TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 307.

[illegible] B. DOWNES, DOING BUSINESS UNDER THE FIRM NAME OF B. B. DOWNES & COMPANY, PLAINTIFFS IN ERROR,

vs.

GEORGE A. BIDWELL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED DECEMBER 11, 1899.

SUPREME COURT OF THE UNITED STATES.

October Term, 1900.

No. 507.

SAMUEL B. DOWNES, DOING BUSINESS UNDER THE FIRM NAME OF S. B. DOWNES & COMPANY, PLAINTIFFS IN ERROR, VS. GEORGE R. BIDWELL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

Circuit Court of the United States for the Southern District of N. Y.

SAMUEL B. DOWNES, Doing Business under the Firm Name of S. B. Downes & Company, Plaintiff, *against* GEORGE R. BIDWELL, Defendant.	At Law. Petition for Writ of Error.

Now comes Samuel B. Downes, doing business under the firm name of S. B. Downes & Company, plaintiff herein, and says:

That on or about the 30th day of November, 1900, this court entered a judgment herein in favor of the defendant and against the plaintiff; in which judgment and proceedings prior thereunto in this case certain errors were committed to the prejudice of this plaintiff; all of which will more in detail appear from the assignment of errors which is filed with this petition.

Wherefore this plaintiff prays that a writ of error may issue in this behalf to the Supreme Court of the United States for the correction of the errors so complained of, and that a transcript of the record, proceedings, and papers in this cause, duly authenticated, may be send to the said Supreme Court of the United States.

Dated December 5, 1900.

COUDERT BROTHERS,
Attorneys for Plaintiff, No. 71 Broadway, Borough of Manhattan, New York City, N. Y.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the southern district of New York, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you

or some of you, between Samuel B. Downes, doing business under the firm name of S. B. Downes & Company, plaintiff, against George R. Bidwell, defendant, a manifest error hath happened, to the great damage of the said Samuel B. Downes, doing business under the firm name of S. B. Downes & Company, as is said and appears by his complaint, we, being willing that such error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the 28th day of December next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 5 day of December, in the year of our Lord one thousand nine hundred, and of the Independence of the United States the 125th.

JOHN A. SHIELDS, *Clerk.*

Allowed.

E. HENRY LACOMBE,
U. S. Circuit Judge.

UNITED STATES OF AMERICA,
Southern District of New York, } ss:

I, John A. Shields, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error and in obedience thereto, do hereby certify that the following pages, numbered from five to 19, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the cause of Samuel B. Downes, doing business under the firm name of S. B. Downes & Company, plaintiff in error, against George R. Bidwell, defendant in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 7th day of December, in the year of our Lord one thousand nine hundred, and of the Independence of the United States the one hundred and twenty-fifth.

[Seal of U. S. Circuit Court, South. Dist. New York.]

JOHN A. SHIELDS, *Clerk.*

[Ten-cent U. S. internal-revenue stamp, canceled Dec. 7, 1900.]

[Endorsed:] E. & A. B. 1829. United States circuit court. Samuel B. Downes, doing business under the firm name of S. B. Downes & Company, plaintiff, against George R. Bidwell, defendant. Copy. Petition & writ of error. Coudert Brothers, att'ys for plaintiff, 71 Broadway, New York. Due service of within *citation* is hereby admitted. New York, Dec. —, 1900. —— ——, U. S. attorney, attorney for def't. P. A copy of the within paper has been this day

received at this office. Dec. 7, 1900. Henry L. Burnett, U. S. attorney. U. S. circuit court. Filed Dec. 7, 1900. John A. Shields, clerk. 1.55 chg.

United States Circuit Court, Southern District of New York.

SAMUEL B. DOWNES, Doing Business under the Firm Name of S. B. Downes & Company,
against
GEORGE R. BIDWELL.

To the above-named defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiff's attorneys within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear, or answer, judgment will be taken against you by default, for the relief demanded in the complaint.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, at the Borough of Manhattan in the city of New York, this 23d day of November, in the year one thousand nine hundred.

[L. S.] J. A. SHIELDS, *Clerk.*

COUDERT BROTHERS,
Plaintiff's Attorneys; Office and Post-office Address, 71 Broadway, Borough of Manhattan, New York City.

I hereby certify, that on the 23d day of November, 1900, at the city of New York, in my district, I served the within summons and complaint upon the within-named defendant, George R. Bidwell, by exhibiting to Webster Elmes, acting deputy collector as per admission of service endorsed hereon the within originals and at the same time leaving with him a copy of each thereof.

WM. HENKEL,
United States Marshal, Southern District of New York.

Dated Nov. 23d, 1900.

J. B. B.

I hereby acknowledge service of this summons and complaint this 23d day of November, 1900, for George R. Bidwell, collector, &c.

WEBSTER ELMES,
Act. Dpt. Col'r.

Endorsed: U. S. circuit court. Filed Nov. 23, 1900. John A. Shields, clerk.

Circuit Court of the United States for the Southern District of New York, Second Circuit.

SAMUEL B. DOWNES, Doing Business under the Firm Name of S. B. Downes & Company, Plaintiff,
vs.
GEORGE R. BIDWELL, Defendant.

Samuel B. Downes, doing business under the firm name of S. B. Downes & Company, in the city of New York, the above-named plaintiff, through Coudert Brothers, his attorneys, complains of George R. Bidwell, the defendant above named, and thereupon the plaintiff states:

First. That at all the times hereinafter mentioned said defendant

was the duly appointed and commissioned collector of customs of the United States at the port of New York in the actual and unrestricted exercise of his functions as such collector and fully vested with all the powers and authority of his said office.

Second. That on the 20th day of November, 1900, the defendant being such collector as aforesaid did under color of his said office and through the erroneous exercise of the powers and authority in him vested for the purposes of the performance of his duties as such collector, unlawfully demand, and by duress of goods, collect from the plaintiff's said firm of S. B. Downes & Company, as alleged duties upon thirty-three (33) boxes of oranges, the product of the island of Porto Rico and consigned to this plaintiff at the port of New York and brought thither from the port of San Juan in the said island of Porto Rico during the month of November, 1900, by the steamer Ponce, and, as alleged duties upon 543 boxes of oranges, the product of the island of Porto Rico, consigned to these plaintiffs at the port of New York and brought thither from the port of Mayaguez in the said island of Porto Rico during the month of November, 1900, by the steamer Ponce (said oranges being those mentioned and described in consumption entry No. 191,958), the sum of $69.35, which sum the plaintiff was unlawfully and against his will and in spite of his formal protest duly made in writing, compelled to pay and did pay, in order to obtain possession of said oranges, to which he was entitled, but which the defendant, enabled so to do by the power and authority of his said office, had detained, was detaining, and threatened to continue to detain from him, exacting as a condition to the delivery thereof such payment of said alleged duties, whereas the said oranges were not liable to duty, the same not having been imported from any foreign country within the meaning of any valid statute or executive order of the United States, but were merchandise which must, under and by virtue of the provisions of the Constitution of the United States in that regard, be admitted to free entry in any port of the United States.

Wherefore, this plaintiff demands judgment against the defendant for the sum of $659.35, with interest thereon from the 20th day of November, 1900, together with the costs of this action.

COUDERT BROTHERS,
Plaintiff's Attorneys, No. 71 Broadway, N. Y.

STATE OF NEW YORK, }
County of New York, } ss.

S. B. Downes, being duly sworn, says: That he is the above-named plaintiff, doing business under the firm name of S. B. Downes & Company; that he has read the foregoing complaint, and that the same is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

S. B. DOWNES.

Sworn to before me this 23d day of November, 1900.

CHAS. A. CONLON,
Notary Public, N. Y. Co.

(Endorsed:) U. S. circuit court. Filed Nov. 23, 1900. John A. Shields, clerk.

United States Circuit Court, Southern District of New York.

SAMUEL B. DOWNES, Doing Business under the Firm Name of S. B. Downes & Company, Plaintiff,
vs.
GEORGE R. BIDWELL, Defendant.
} Demurrer.

The defendant above named, by Henry L. Burnett, United States attorney, attorney for the defendant in the above-entitled action, demurs to the plaintiff's complaint therein as follows:

First. That the court has not jurisdiction of the subject of the action.

Second. That the complaint does not state facts sufficient to constitute a cause of action.

Dated November 27, 1900.

HENRY L. BURNETT,
United States Attorney, Attorney for Defendant.

(Endorsed:) U. S. circuit court, southern district of New York. Samuel B. Downes *vs.* George R. Bidwell. Demurrer. Henry L. Burnett, U. S. attorney, attorney for def't. U. S. circuit court. Filed Nov. 27, 1900. John A. Shields, clerk.

At a stated term of the circuit court of the United States held in and for the southern district of New York, at the post-office building, in the borough of Manhattan, in the city of New York, on the 30th day of Nov'r, 1900.

Present: Hon. E. Henry Lacombe, circuit judge.

SAMUEL B. DOWNES, Doing Business under the Firm Name of S. B. Downes & Company, Plaintiff,
against
GEORGE R. BIDWELL, Defendant.

This cause having been regularly brought on for argument upon the issues of law formed by the complaint of the plaintiff, and the demurrer interposed thereto by the defendant, at a stated term of this court held by me in and for the southern district of New York, at the post-office building, in the borough of Manhattan, city of New York, on the 30th day of November, 1900, and the said cause having been duly argued by Henry C. Platt, Esq., assistant U. S. attorney for the defendant, in support of the demurrer, and by Frederic R. Coudert, Jr., Esq., of counsel for the plaintiff, in opposition to said demurrer, and due deliberation having been had thereon, it is, on motion of Henry L. Burnett, Esq., U. S. attorney and attorney for the defendant—

Ordered, adjudged, and decreed that the said demurrer be, and the same hereby is, sustained on the ground that the complaint does not state facts sufficient to constitute a cause of action.

It is further ordered, adjudged, and decreed that the complaint of the plaintiff be, and the same hereby is, dismissed, with costs to the defendant, to be taxed.

E. HENRY LACOMBE,
U. S. Circuit Judge.

(Endorsed:) U. S. circuit court, southern district of New York. Samuel B. Downes, doing business under the firm name of S. B. Downes & Company, plaintiff, *versus* George R. Bidwell, defendant.

Decree. Henry L. Burnett, United States attorney, attorney for defendant. Due service of a copy of the within is hereby admitted. Coudert Brothers, attorneys for plaintiff. U. S. circuit court. Filed Nov. 30, 1900. John A. Shields, clerk.

United States Circuit Court, Southern District of New York.

SAMUEL B. DOWNES, Doing Business under the Firm Name of S. B. Downes & Company, Plaintiff,
against
GEORGE R. BIDWELL, Defendant.
} Judgment.

This action having been brought on for argument before the Hon. E. Henry Lacombe, circuit judge, at a stated term of this court held on the 30th day of November, 1900, at the post-office building in the city of New York, in the southern district of New York, and the plaintiff having appeared by Coudert Brothers, Esquires, his attorneys, and the defendant by Henry L. Burnett, U. S. attorney, and argument having been had upon the demurrer to the complaint herein by Henry C. Platt, Esq., assistant U. S. attorney, of counsel for the defendant, in support of the demurrer, and by Frederic R. Coudert, Jr., Esq., of counsel for plaintiff, in opposition thereto, and the said court having, on motion of Henry L. Burnett, Esq., U. S. attorney, attorney for the defendant, made and filed a decree dated the 30th day of November, 1900, sustaining the said demurrer upon both the grounds therein stated and dismissing the complaint herein, and the costs of the defendant having been adjusted at the sum of sixteen $\frac{30}{100}$ dollars ($16.30):

Now, on motion of Henry L. Burnett, Esq., U. S. attorney, attorney for the defendant, it is—

Ordered, adjudged, and decreed that the complaint herein be dismissed and that the defendant recover of the plaintiff the said sum of sixteen $\frac{30}{100}$ dollars, costs, and that the defendant have execution therefor.

E. H. LACOMBE,
U. S. Circuit Judge.

(Endorsed:) United States circuit court. Samuel B. Downes, doing business under the firm name of S. B. Downes & Company, plaintiff, against George R. Bidwell, defendant. Judgment. Coudert Brothers, att'ys for plaintiff, 71 Broadway, New York. U. S. circuit court. Filed Dec. 1, 1900, 12.30 p. m. John A. Shields, clerk.

Supreme Court of the United States.

SAMUEL B. DOWNES, Doing Business under the Firm Name of S. B. Downes & Company, Plaintiff,
against
GEORGE R. BIDWELL, Defendant.
} Assignment of Errors.

Afterwards, to wit, on the 5th day of December, 1900, before the Supreme Court of the United States, at the city of Washington, comes the said plaintiff in error, by Coudert Brothers, his attorneys, and says

that in the record and proceedings aforesaid there is manifest error in this, to wit, that by the record aforesaid it appears:

First. That the judgment aforesaid, in form aforesaid given, was given for the said defendant in error against the said plaintiff in error.

Second. That judgment was not given for the said plaintiff in error against the said defendant in error, as demanded in the complaint.

Third. That the said circuit court of the United States for the southern district of New York held that the facts stated in the complaint herein do not constitute a cause of action.

Fourth. That in and by its said judgment the said circuit court dismissed the complaint herein with costs.

And the said plaintiff in error prays that the judgment aforesaid for the errors aforesaid, and other errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing, and that he, the said plaintiff in error, may be restored to all things which he has lost by occasion of said judgment, etc.

COUDERT BROTHERS,
Attorneys for Plaintiff in Error,
71 *Broadway, New York City.*

(Endorsed:) Supreme Court of the United States. Samuel B. Downes, doing business under the firm name of S. B. Downes & Company, plaintiff, against George R. Bidwell, defendant. Assignment of errors. Coudert Brothers, att'ys for pl't'f in error, 71 Broadway, New York. U. S. circuit court. Filed Dec. 5, 1900. John A. Shields, clerk.

Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

SAMUEL B. DOWNES, Doing Business under the Firm Name of S. B. DOWNES & Company, Plaintiff,
against
GEORGE R. BIDWELL, Defendant.

Bond for Damages and Costs.

Know all men by these presents that we, Frederic R. Coudert, Jr., and Lorenzo Semple, are held and firmly bound unto the above-named George R. Bidwell in the sum of two hundred and fifty ($250) dollars, to be paid to the said George R. Bidwell; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 4th day of December, in the year of our Lord one thousand nine hundred.

Whereas the above-named Samuel B. Downes has sued out a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the judge of the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such that if the above-named Samuel B. Downes shall prosecute the said writ to effect and answer all damages and costs if he fails to make his appeal or writ

good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

FREDERIC R. COUDERT, Jr.
LORENZO SEMPLE.

Sealed and delivered and taken and acknowledged this 4th day of December, 1900, before me—

CHAS. A. CONLON,
Notary Public, N. Y. Co.

UNITED STATES OF AMERICA,
Southern District of New York, } ss:

Frederic R. Coudert, Jr., and Lorenzo Semple, being duly sworn, do depose and say, each for himself, that he is worth the sum of five hundred ($500) dollars over and above all his just debts and liabilities.

FREDERIC R. COUDERT, Jr.
LORENZO SEMPLE.

Sworn to this 4th day of December, 1900, before me—
[SEAL.]

CHAS. A. CONLON,
Notary Public, N. Y. Co.

(Endorsed:) Supreme Court of the United States. Samuel B. Downes, doing business under the firm name of S. B. Downes & Company, plaintiff, against George R. Bidwell, defendant. Bond for damages and costs. Coudert Brothers, att'ys for pl't'f in error, 71 Broadway, New York. Approved as to form, and also as to sufficiency of sureties, with reservation, however, to the def't of the right at any time to examine the sureties under oath touching their assets, liabilities, and financial condition generally. E. Henry Lacombe, U. S. circuit judge. U. S. circuit court. Filed Dec. 5, 1900. John A. Shields, clerk.

By the Honorable E. Henry Lacombe, one of the judges of the circuit court of the United States for the southern district of New York, in the second circuit.

To George R. Bidwell, Greeting:

You are hereby cited and admonished to be and appear before the United States Supreme Court, to be holden at the city of Washington, on the 28th day of December, 1900, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein Samuel B. Downes is plaintiff and you are defendant, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done in that behalf.

Given under my hand, at the borough of Manhattan, in the city of New York, in the district and circuit above named, this 5th day of Dec'r, in the year of our Lord one thousand nine hundred, and of the Independence of these United States the one hundred and twenty-fifth.

E. H. LACOMBE,
Judge of the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

[Endorsed:] E. & A. B. 1829. Supreme Court of the United States. Samuel B. Downes, doing business under the firm name of

S. B. Downes & Company, plaintiff, against George R. Bidwell, defendant. Citation. Coudert Brothers, att'y for pl't'f in error, 71 Broadway, New York. Due service of within citation is hereby admitted. New York, Dec. 5, 1900. —— ——, U. S. attorney, attorney for def't. U. S. circuit court. Filed Dec. 7, 1900. John A. Shields, clerk. A copy of the within paper has been this day received at this office. Dec. 7, 1900. Henry L. Burnett, U. S. attorney. P. 10 chg.

Endorsed on cover: File No., 17,992. S. New York C. C. U. S. Term No., 507. Samuel B. Downes, doing business under the firm name of S. B. Downes & Company, plaintiffs in error, *vs.* George R. Bidwell. Filed December 11th, 1900.